

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

COMMON CAUSE NEW YORK, *et al.*,

Plaintiffs,

and

UNITED STATES OF AMERICA, *et al.*,

Plaintiff-Intervenors,

v.

**BOARD OF ELECTIONS IN THE CITY
OF NEW YORK, *et al.*,**

Defendants.

Case No. 1:16-cv-06122 (NGG) (RML)

JOINT STATUS REPORT

Pursuant to this Court’s Order of April 14, 2020, the parties hereby submit a joint status report regarding implementation of the Consent Judgment and Decree (ECF No. 66).¹ As the Court is aware, Defendants filed an agreed upon Comprehensive Remedial Plan (“CRP”) with the Court (ECF No. 80), in accordance with paragraph 27 of the Consent Decree on March 13, 2020.

A. Position of the Private Plaintiffs

While the private plaintiffs recognize that the NYC BOE is currently facing unprecedented challenges due to the COVID-19 pandemic, the private plaintiffs continue to have

¹ In providing this status report, Plaintiffs do not waive their right to object to any rule, regulation, form, plan, report, or document, or to any action or inaction by the Board, on the ground that it does not comply, or is not sufficient to ensure compliance, with the National Voter Registration Act, the New York Election Law, or the Consent Decree. *See* Consent Decree ¶ 41. Similarly, Defendants do not waive any right to contend that such materials, actions, or inactions comply with the National Voter Registration Act, the New York Election Law, or the Consent Decree.

serious concerns regarding Defendants' compliance with the Consent Decree and its implementation of the CRP. These concerns predate the pandemic. The private plaintiffs fear that, without intervention by the Court, these issues will remain unaddressed to the detriment of voters casting ballots in the upcoming primary and general elections. The private plaintiffs therefore provide a summary of the parties' correspondence and reserve the right to seek a status conference before the Court at the appropriate time.

Over the last year, the private plaintiffs have repeatedly raised the following issues regarding Defendants' compliance with the Consent Decree: (1) whether Defendants had completed any "unscheduled, unannounced site visits to review procedures, policies, forms and training materials" (ECF No. 66, ¶ 28(f)(iii)); (2) what Defendants were doing to record and track voter complaints (ECF No. 66 ¶ 28(i)(iv)); and (3) what list maintenance trainings were being conducted, and what materials were being provided in connection with those trainings (ECF No. 66 ¶ 28(k)(i)-(ii)). The private plaintiffs raised these issues in a joint conference call with Defendants in April 2019, and sent further correspondence to Defendants in December 2019 and February 2020. Though the private plaintiffs ultimately did not object to the Defendants' filing of the CRP earlier this year, they made clear to Defendants that the aforementioned issues remained outstanding and they would continue to seek a resolution in advance of the upcoming 2020 elections.

On March 13, 2020, Defendants stated that training sessions and unscheduled site visits had already started, but provided no further detail on what the training sessions entailed and when such site visits took place. Despite the parties' conversations and correspondence throughout 2019, Defendants revealed for the first time that the state Board of Elections conducted a training on the National Voter Registration Act ("NVRA") on July 11, 2019.

Defendants also stated that, despite the directives in both the Consent Decree (adopted in December 2017) and the CRP, Defendants' borough offices continued to track voter complaints manually and no citywide system of tracking complaints exists.

On May 7, 2020, the private plaintiffs responded, asking for the following information: (1) the dates of the unscheduled site visits and the offices visited; and (2) what, if any, training had taken place since the July 2019 session and what training materials were used. The private plaintiffs also urged Defendants to adopt a robust, citywide complaint tracking procedure to give Defendants visibility into trends in voter complaints and greater oversight over the borough offices, and that such a procedure be accessible remotely given the current pandemic. The private plaintiffs also requested a call with Defendants, in the hope that these issues could be discussed and addressed before the filing of this Joint Status Report.

On May 21, 2020, Defendants stated they would not be in a position to respond until after the primary election on June 23, 2020. Though Defendants' portion of the joint status report below provides some of the information that private plaintiffs have previously requested, the private plaintiffs only learned of this information on June 9, 2020.

B. Position of the United States

The United States continues to monitor the Defendants' implementation of the Consent Decree and will continue to work with Defendants and other parties to resolve any implementation issues as appropriate. Defendants have not yet filed the annual report due to this Court on March 1, 2020. *See* ECF No. 66 ¶ 39. The parties have discussed this delay, and the United States recognizes that circumstances related to the COVID-19 pandemic may have impacted Defendants' ability to produce this report while administering scheduled elections. Defendants have committed to file the report by no later than September 1, 2020.

C. Position of the State of New York

Plaintiff-Intervenor the State of New York (“State”) continues to monitor Defendants’ implementation of the Consent Decree and compliance with the NVRA and New York’s election law. Since agreeing to the Consent Decree, the State has worked constructively with Defendants, the United States, and Private Plaintiffs to develop Defendants’ CRP, and to review the monthly and semi-annual audit reports produced by Defendants pursuant to the Consent Decree. The State shares the U.S. Department of Justice’s concerns regarding the not yet filed annual report for the previous year and recognizes that circumstances related to the ongoing COVID-19 pandemic may have affected Defendants’ filing of this report. The State further shares many of the concerns of Private Plaintiffs regarding Defendants’ compliance with the training and audit benchmarks as well as voter complaint tracking, processing, and resolution; and at various points since the Consent Decree was filed, the State has communicated its concerns to Defendants.² Moving forward, the State will continue to closely monitor Defendants’ compliance with the Consent Decree, including Defendants’ in-person trainings and instructional materials for properly implementing the NVRA and New York’s election law, as well as its processes for appropriately handling voter complaints and the implementation of Defendants’ contemplated complaint tracking computer software. Should Defendants fail to adhere to the CRP or the Consent Decree, and if good-faith efforts to resolve Plaintiffs’ concerns with Defendants regarding those failures are unsuccessful, the State will seek the Court’s intervention as contemplated under Paragraph 41 of the Consent Decree.

² Though Defendants’ portion of the joint status report below provides some of the information that the State has previously requested, the State only learned of this information on June 9, 2020.

D. Position of the Defendants

The Board submitted the updated Comprehensive Remedial Plan on October 18, 2019, incorporating the plaintiffs requested clarifications as set forth in their letter dated September 27, 2019. At that time, the Board was fully engaged in preparations to conduct early voting for the first time in New York State and to conduct the November 2019 General Election. Subsequently, the Board completed the comprehensive canvass and recanvass process for the November 2019 General Election and completed the election certification process in December 2019.

The start of this year has seen an extremely busy period for election activities requiring Board action, adjustment and attention. In the first days of January, the Mayor of New York City issued a proclamation to conduct a Special Election to fill the vacancy in the office of Queens Borough President on March 23, 2020. Independent Nominating Petition filings for that special election occurred in mid-January. The filing of Designating Petitions for the 2020 Presidential Primary occurred during the beginning of February. The Governor and the Mayor respectively proclaimed that Special Elections for Member of the Assembly in the 31st Assembly District and the 37th City Council District were to be held on April 28, 2020 (the scheduled date of the Presidential Primary). Certificates of Nomination and Independent Nominating Petitions were filed with the Board during the ensuing two weeks.

On March 14, 2020, early voting commenced for the Special Election for Queens Borough President. After two days of voting, the Mayor cancelled the Special Election as part of the City's response to the COVID-19 emergency.

A Governor's Executive Order shortened the period to circulate designating petitions for the June Primary Election concluding same on March 17, 2020. The New York State Legislature and Governor advanced the filing period for said petitions to March 19 and 20, 2020.

For each set of petitions or certificates filed, Board staff conducted the statutorily mandated review, including objections, and the Commissioners conducted open public hearings for candidates seeking to qualify for the ballot in each election. The April 2020 hearings were conducted in a new manner, using video-conferencing technology with most participants appearing remotely to promote public health and social distancing.

The Governor postponed the Special Elections and Presidential Primary scheduled for April 28, 2020 to June 23, 2020 (the date of the primary elections for federal, state and local public offices and party positions) and those elections were later cancelled. By order of the U.S. Court of Appeals for the 2nd Circuit, the Democratic Presidential Primary was reinstated and will be conducted on June 23, 2020 along with other scheduled contests.

A Governor's Executive Order required the Board to mail absentee ballot applications to all active and inactive voters eligible to vote in any contest scheduled for the June 23 Primary Election, resulting in the Board mailing such applications to more than 3,600,000 voters. The Board is presently processing absentee ballot applications in unprecedented numbers and making final preparations for early voting, which will begin this Saturday, June 13, 2020, at approximately 80 sites throughout the City of New York. The Board is planning to conduct the June 23, 2020 Primary Elections in over 1,200 poll sites citywide employing tens of thousands of poll workers.

Throughout the duration of the current State of Emergency, the Board's offices have not closed its doors to the public; however, the Board has operated with an extremely reduced staff. While staff has largely returned, the Board's operations remain on a social distancing footing with reduced staffing. Staff members have tested positive for the Covid-19 virus, some are in the most vulnerable demographic categories and sadly, the Board has lost at least three staff members

to this pandemic.

The Board continues to move forward to effectively implement the terms and conditions of the Consent Decree under most extraordinary and challenging circumstances, while simultaneously conducting election operations under such circumstances and in response to a myriad of changes made by Governor's Executive Orders and/or legislative mandates.

Throughout this emergency period, the required monthly and semi-annual statistical reports have been submitted. In addition, yearly statistics for 2019 were sent as part of the March 15 report, which also included data for Feb 2020 and the 2019 second half semi-annual report. The annual statistical report included an explanation/legend for the different fields of data.

With the constantly changing electoral calendar, several statutory changes and modifications by Governor's Executive Order, the mailing of annual information notice to all voters has been delayed until further direction from the New York State Board of Elections.

In addition, it is anticipated that the analytical portions of the March 2020 annual report (completion of which has been delayed due to the COVID-19 emergency) will be completed along with the canvass and recanvass process and return of a significant number of staff during the summer of 2020.

**BOE'S IMPLEMENTATION OF
ITS OBLIGATIONS AS OF MAY
31, 2020**

List Maintenance Unit and Staffing

- List Maintenance Manager Antonina Cali is now Antonina Carlson
- Bronx List Maintenance Supervisor Maria Martinez was appointed List Maintenance Supervisor (from Acting Supervisor)

Complaint Intake Procedures

- **Update on Initial Proposal**
 - The Board has been tracking voter complaints using a manual process. In order to improve the handling of such complaints the Board's staff has been in contact with both Zendesk and Indigov representatives regarding the development and implementation of a new automated complaint tracking system that will provide a modern, secure, efficient and easy to use digital solution to improving the process. The system will track all voter complaints from receipt to resolution, and if necessary, send reminders to staff if an issue has yet to be satisfactorily resolved. The system will also be able to provide valuable data and reports concerning the nature of the complaints, what actions were taken by staff to rectify same, and to determine the cause of any issues. This will allow staff to address recurring mistakes, if any, on the part of the Board's staff or the voters and reduce such issues in the future. Thus far, the Board has procured 24 licenses for use of the system, which is being designed to meet the Board's needs. It is anticipated that four licenses will be used by staff in the General Office and four in each borough office) for citywide implementation of the new system.
 - Zendesk has added a new feature – the “Congress on a Constituent Relationship Management” tool. The consultant from IndiGov has been working directly with staff of US Congress Members to create a constituent focused philosophy plan and modernize communication. The Board was informed that this tool will work well for its needs as it is specifically designed for government clients.
 - Board staff has conducted several conference calls with the consultants from both Zendesk and IndiGov. During these calls (February 2020 – just prior to the COVID-19 crisis), the consultant from IndiGov assisted in developing the most effective solutions for managing and addressing voter complaints. Zendesk is tasked with building and tailoring the system to best address the Board's needs. Upon completion, in-person training will be scheduled to finalize the set-up and to help implement the system.

- A conference call was conducted on Friday March 13th to discuss additional information that Zendesk needed and to schedule an in-person consultation with IndiGov. The COVID-19 crisis required postponement of this meeting. On May 21, 2020, the Board formally requested that IndiGov and Zendesk schedule the consultation for after the June 23, 2020 election.

From October 18, 2019 through May 31, 2020, the board has received a total of 727 complaints citywide which resulted in changes to the voter's record. Each change was investigated and recorded by using the Board Voter Correction form. This form is then scanned into our AVID system and attached to the voter's record before any changes can be made. Once completed, the work is then sent to a quality queue for review and bipartisan approval.

All complaints are logged into a tracking spreadsheet by the borough supervisors and reviewed weekly by the list maintenance managers to check corrections. Any errors on a voter's record may be tracked to a specific employee to ensure compliance with proper list maintenance procedures and to determine if remedial training is necessary.

Unscheduled Site Visits

Following the November 5, 2019 General Election unscheduled and unannounced visits to the Board's Borough Offices were conducted by the List Maintenance Managers from November 7, 2019 to November 14, 2019. During these visits the List Maintenance Managers observed how the borough staff conducts its work in accordance with established Board procedures in real time, while also affording the staff the ability to ask any questions or voice concerns and receive an immediate response and/or remedial guidance. In addition, tracking reports were examined to review the performance accuracy of list maintenance employees.

- **Bronx Borough Office Site Visit – November 7, 2019**

- List Maintenance Managers met with Deputy Chief Clerks³, List Maintenance Supervisors, Voter Registration Supervisors, Absentee Supervisors, and additional staff members and observed the staff processing Affidavits as per NYSBOE guidelines and conducting the inquiry process, using both the AVID system and the NYSVoter Lookup. List Maintenance Managers also addressed questions with regards to NYSVoter Lookup and Universal Transfers.

- **Queens Borough Office Site Visit – November 8, 2019**

- List Maintenance Managers met with the Chief Clerk and List Maintenance Supervisors and observed staff making copies of all Affidavits as per NYSBOE guidelines and staff conducting inquiry using both the AVID system and the NYSVoter Lookup. List Maintenance Managers also addressed questions with regards to NYSVoter Lookup and Universal Transfers.

³ The Bronx office of the BOE is headed by two Deputy Chief Clerks rather than a Chief and a Deputy Chief Clerk.

- **Staten Island Borough Office Site Visit – November 8, 2019**
 - List Maintenance Managers met with the SI List Maintenance Supervisors and Voter Registration Supervisor and observed staff making copies of all Affidavits as per NYSBOE guidelines and staff conducting inquiry using both the AVID system and the NYSVoter Lookup. List Maintenance Managers also addressed questions with regards to NYSVoter Lookup.
- **Manhattan Borough Office Site Visit – November 12, 2019**
 - List Maintenance Managers with the List Maintenance Supervisors and observed staff making copies of all Affidavits as per NYSBOE guidelines and staff conducting inquiry using both the AVID system and the NYSVoter Lookup. List Maintenance Managers also addressed questions with regards to NYSVoter Lookup.
- **Brooklyn Borough Office Site Visit – November 14, 2019**
 - List Maintenance Managers met with the List Maintenance Supervisors and observed staff making copies of all Affidavits as per NYSBOE guidelines and staff conducting inquiry using both the AVID system and the NYSVoter Lookup. List Maintenance Managers also addressed questions with regards to NYSVoter Lookup.

Updates to Training Materials

- **December 17, 2019** - The Commissioners of Elections in the City of New York, in an open public meeting, adopted the List Maintenance Procedures which reflect all of the changes mandated by State Law, the Consent Decree/Comprehensive Remedial Plan as well as all of the system changes and updates made to the Board's voter registration system AVID, from **February 2017 to December 2019**.
- **February 2020**- The List Maintenance Reference Guide was finalized, to comply with the procedures adopted by the Commissioners on December 17, 2019.

Meetings and Training

- **July 11, 2019** - Staff from the New York State Board of Elections conducted NVRA training with all borough list maintenance and AVID supervisors in attendance and general office staff - list maintenance managers, MIS manager, voter registration staff and the Deputy Executive Director.
- **December 6, 2019** – Staff of the New York State Board of Elections conducted its NYSVoter Audit. City Board staff and consultants attended per the State Board's direction. The State Board notified the City Board that its voter registration system is in compliance and the State Board determined that it successfully completed the audit process.
- **December 10, 2019** - List Maintenance Managers met with List Maintenance Borough Supervisors, MIS Coordinator, and Board's consultant, to discuss and review updated features, policies and functions for AVID 6.5.

- **December 19 - 23, 2019** - AVID 6.5 setup, testing and training was conducted with active participation by the List Maintenance Managers, MIS Coordinator, Board's consultant, List Maintenance, Voter Registration, and Absentee Supervisors from each Borough office.

December 23, 2019 – AVID 6.5 launched

As each new stage of the AVID system upgrades and enhancements are completed, Borough supervisors train staff to ensure compliance. The December 17, 2019 adoption of the List Maintenance Procedures by the Commissioners is a culmination of a series of AVID changes that began in May 2018 and concluded in December 2019. It must be noted that beginning in January 2019, the Governor and State Legislature enacted many changes and modifications to the New York State Election Law which required additional system changes resulting in a delay to the release of the most recent enhanced version of AVID. Upon the enactment of each legislative modification, the List Maintenance Managers and other staff revised the draft List Maintenance Procedures accordingly for review by the Board's Office of the General Counsel before submission to the Commissioners for their review and approval. With the Commissioners' action, a training session was conducted with the Borough List Maintenance Supervisors to review all changes:

- **March 9, 2020** - List Maintenance Managers met with all of the Borough Offices' List Maintenance and Voter Registration Supervisors, MIS Coordinator, and the Board's AVID consultant and provided training on Technical Procedures and reviewed the Reference Guide. The Reference Guide clearly identifies every queue in the AVID 6.5 system with detailed description for each. The Reference Guide is a key training tool for all staff assigned to the list maintenance and voter registration functions at the Board. List Maintenance and Voter Registration supervisors began to train their staff on the AVID 6.5 technical procedures utilizing the reference guide after the List Maintenance Supervisors' training session on December 19, 2019.
- After the List Maintenance Managers conducted the above referenced training session on March 9th, additional borough office visits were in the process of being scheduled; however, due to the COVID-19 pandemic and Executive Orders issued by the Governor of the State of New York, the scheduled visits were postponed and will be rescheduled when circumstances permit.

List Management Managers and Supervisors Reports for Quality Control

List Maintenance Managers review several reports on a daily and weekly basis to audit and monitor Borough list maintenance work. List Maintenance borough supervisors monitor workflow throughout the day and review related reports on a nightly and weekly basis.

The performance of staff members conducting list maintenance functions is evaluated on an ongoing basis and appropriate remedial action taken and/or removal from the unit, if necessary.

As a result of the COVID-19 crisis, the Board has been operating with a limited number of staff members and the List Maintenance Managers worked remotely from home with Virtual Private Network (VPN) access from April 1st thru May 19th.

Given cyber-security concerns, access to AVID via VPN access was expressly prohibited at the direction of Executive Management. Such direction was necessary to provide the most secure protection of voter data and to avoid exposing same to any potential external interference and/or manipulation. While adherence to legally mandated deadlines for processing is extremely important, the protection and preservation of the voter data and thus the integrity of the voting system is of paramount concern. As such, such a direction was mandated under the circumstances.

That being said, the List Maintenance Managers continued to address any policy or procedure questions that arose and successfully addressed all such issues remotely. Even though the List Maintenance Managers did not have VPN access to the AVID system at the time, they remained in regular contact via conference call and email with the List Maintenance Borough Supervisors, who continued to work in their offices on list maintenance tasks throughout the pandemic. The List Maintenance Managers also had remote access to their office computers and all of the data and reports related to ongoing List Maintenance functions enabling them continue to monitor the work being conducted in the boroughs. The Board has continued to submit the required monthly and semi-annual auditing reports to the Department of Justice in compliance with the consent decree.

Date: June 9, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to counsel of record.

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